

U.S.C. 10705 if it finds that the cancellation, or a rate that would remain in place after the cancellation, is contrary to the competition policies of 49 U.S.C. 10101a or is otherwise anticompetitive.

(b) *Factors.* In making its determination, the Commission will take into account all relevant factors, including:

(1) The revenues of the involved railroads on the affected traffic via the rail routes in question.

(2) The efficiency of the rail routes in question, including the costs of operating via those routes.

(3) The rates charged or sought to be charged by the canceling railroad or railroads.

(4) The revenues, following the cancellation, of the involved railroads for the traffic in question via the affected through route; the costs of the involved railroads for that traffic via that route; the ratios of those revenues to those costs; and all circumstances relevant to any difference in those ratios; provided that the mere loss of revenue to an affected carrier will not be a basis for finding that a cancellation is anticompetitive.

(c) *Other considerations.* (1) The Commission will not consider product competition.

(2) If a railroad wishes to rely in any way on geographic competition, it will have the burden of proving the existence of effective geographic competition by clear and convincing evidence.

(3) Where a cancellation has been determined to be contrary to the competitive standards of this section, the overall revenue inadequacy of the canceling carrier will not excuse such a cancellation.

(4) Any investigations of proposed cancellations under the terms of this paragraph will be conducted and concluded by the Commission on an expedited basis.

§ 1144.5 Prescription.

(a) *General.* A through route or a through rate shall be prescribed under 49 U.S.C. 10705, or a switching arrangement shall be established under 49 U.S.C. 11103, if the Commission determines:

(1) That the prescription or establishment (i) is necessary to remedy or pre-

vent an act that is contrary to the competition policies of 49 U.S.C. 10101a or is otherwise anticompetitive, and (ii) otherwise satisfies the criteria of 49 U.S.C. 10705 and 11103, as appropriate. In making its determination, the Commission shall take into account all relevant factors, including:

(A) The revenues of the involved railroads on the affected traffic via the rail routes in question.

(B) The efficiency of the rail routes in question, including the costs of operating via those routes.

(C) The rates or compensation charged or sought to be charged by the railroad or railroads from which prescription or establishment is sought.

(D) The revenues, following the prescription, of the involved railroads for the traffic in question via the affected route; the costs of the involved railroads for that traffic via that route; the ratios of those revenues to those costs; and all circumstances relevant to any difference in those ratios; provided that the mere loss of revenue to an affected carrier shall not be a basis for finding that a prescription or establishment is necessary to remedy or prevent an act contrary to the competitive standards of this section; and

(2) That either:

(i) The complaining shipper has used or would use the through route, through rate, or reciprocal switching to meet a significant portion of its current or future railroad transportation needs between the origin and destination; or

(ii) The complaining carrier has used or would use the affected through route, through rate, or reciprocal switching for a significant amount of traffic.

(b) *Other considerations.* (1) The Commission will not consider product competition.

(2) If a railroad wishes to rely in any way on geographic competition, it will have the burden of proving the existence of effective geographic competition by clear and convincing evidence.

(3) When prescription of a through route, a through rate, or reciprocal switching is necessary to remedy or prevent an act contrary to the competitive standards of this section, the

§ 1144.6

overall revenue inadequacy of the defendant railroad(s) will not be a basis for denying the prescription.

(4) Any proceeding under the terms of this section will be conducted and concluded by the Commission on an expedited basis.

§ 1144.6 General.

(a) These rules will govern the Commission's adjudication of individual cases pending on or after the effective date of these rules (October 31, 1985).

(b) These rules supersede the rules at 49 CFR part 1132 to the extent they are inconsistent.

(c) Discovery under these rules is governed by the Commission's general rules of discovery at 49 CFR part 1114.

(d) Any Commission determinations or findings under this part with respect to compliance or non-compliance with the standards of §§1144.4 and 1144.5 shall not be given any *res judicata* or collateral estoppel effect in any litigation involving the same facts or controversy arising under the antitrust laws of the United States.

PARTS 1146—1149—[RESERVED]

PARTS 1150-1174—LICENSING PROCEDURES

PARTS 1150-1159—RAIL LICENSING PROCEDURES

PART 1150—CERTIFICATE TO CONSTRUCT, ACQUIRE, OR OPERATE RAILROAD LINES

Subpart A—Applications Under 49 U.S.C. 10901

Sec.

- 1150.1 Introduction.
- 1150.2 Overview.
- 1150.3 Information about applicant(s).
- 1150.4 Information about the proposal.
- 1150.5 Operational data.
- 1150.6 Financial information.
- 1150.7 Environmental and energy data.
- 1150.8 Additional support.
- 1150.9 Notice.
- 1150.10 Procedures.

Subpart B—Designated Operators

- 1150.11 Introduction.

49 CFR Ch. X (10-1-96 Edition)

- 1150.12 Information about the designated operator.
- 1150.13 Relevant dates.
- 1150.14 Proposed service.
- 1150.15 Information about offeror.
- 1150.16 Procedures.

Subpart C—Modified Certificate of Public Convenience and Necessity

- 1150.21 Scope of rules.
- 1150.22 Exemptions and common carrier status.
- 1150.23 Modified certificate of public convenience and necessity.
- 1150.24 Termination of service.

Subpart D—Exempt Transactions Under 49 U.S.C. 10901.

- 1150.31 Scope of exemption.
- 1150.32 Procedures and relevant dates—transactions that involve creation of Class III carriers.
- 1150.33 Information to be contained in notice—transactions that involve creation of Class III carriers.
- 1150.34 Caption summary—transactions that involve creation of Class III carriers.
- 1150.35 Procedures and relevant dates—transactions that involve creation of Class I or Class II carriers.
- 1150.36 Exempt construction of connecting track.

Subpart E—Exempt Transactions Under 49 U.S.C. 10902 for Class III Rail Carriers

- 1150.41 Scope of exemption.
- 1150.42 Procedures and relevant dates for small line acquisitions.
- 1150.43 Information to be contained in notice for small line acquisitions.
- 1150.44 Caption summary.
- 1150.45 Procedures and relevant dates—transactions under section 10902 that involve creation of Class I or Class II rail carriers.

AUTHORITY: 5 U.S.C. 553 and 559, 49 U.S.C. 721(a), 10502, 10901 and 10902.

SOURCE: 47 FR 8199, Feb. 25, 1982, unless otherwise noted. Redesignated at 47 FR 49581, Nov. 1, 1982.

Subpart A—Applications Under 49 U.S.C. 10901

§ 1150.1 Introduction.

(a) *When an application is required.* This subpart governs applications under 49 U.S.C. 10901 for a certificate of